

APPENDIX

Supreme Court, U. S.

FILED

JAN 28 1980

MICHAEL ROSAK, JR., CLERK

**In the Supreme Court of the United States**

OCTOBER TERM, 1979

No. 79-244

UNITED STATES OF AMERICA,

*Petitioner*

—v.—

JOHN M. SALVUCCI, JR., and JOSEPH G. ZACKULAR

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED AUGUST 14, 1979  
CERTIORARI GRANTED DECEMBER 10, 1979

**In the Supreme Court of the United States**

OCTOBER TERM, 1979

**No. 79-244**

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UNITED STATES OF AMERICA,

*Petitioner*

—v.—

JOHN M. SALVUCCI, JR., and JOSEPH G. ZACKULAR

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ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIRST CIRCUIT

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\* A copy of the judgment and opinion of the United States Court of Appeals for the First Circuit was reproduced as Appendix A to the petition for a writ of certiorari (pp. 1a-11a).

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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Cr. 78-191-G

UNITED STATES OF AMERICA

*v.*

JOHN M. SALVUCCI and JOSEPH ZACKULAR

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DOCKET ENTRIES

| DATE    | PROCEEDINGS   |
|---------|---|
| 5/5/78  | Indictment returned. Case referred to Magistrate <i>COHEN</i> for pretrial proceedings.   |
| 5/12/78 | <i>COHEN, M.</i> Arr. notes: Defendants enter pleas of Not Guilty; motions due 5/22/78; present bail cont'd.  |
| 5/15/78 | Deft. Salvucci's motions: for bill of particulars; for list of witnesses; to be furnished w/crim. records; for information as to Govt's use of informants; for notice of use of prior acts; for prior statements of witnesses; for Grand Jury minutes; to suppress; to dismiss; to compel Govt. to state reasons; for hearing, filed, c/s |
| 5/18/78 | Deft. Zackular's motions: to suppress and to dismiss, filed, c/s  |
| 5/23/78 | Govt's response to defendants' pre-trial motions, filed c/s   |
| 5/30/78 | Memo to Clerk from AUSA Laymon re Omnibus Hearing, filed  |
| 6/5/78  | <i>COHEN, M.</i> —Memorandum and order of pre-trial motions, filed.   |

| DATE    | PROCEEDINGS  |
|---------|--|
| 6/12/78 | Deft. Zackular's motion for review of Order of Magistrate, filed, c/s  |
| 6/12/78 | Government's response to Ds' motion for bill of particulars, filed; Government's response to Ds' motion for review, filed; supplemental response to Ds' motion for review, filed (c/s).  |
| 7/7/78  | GARRITY, J.—Called; motions hearing scheduled for 8/7/78 at 2:00 PM and trial scheduled for 9/5/78 at 10 AM.   |
| 8/4/78  | Government's memorandum of law, filed (c/s).   |
| 8/7/78  | GARRITY, J.—After hearing, Ds' motion for names of government witnesses, DENIED; Ds' motion to suppress evidence illegally seized and Ds' motion to dismiss: "parties given until 8/11 to file supplementary briefs, and taken under advisement as to motion to suppress" and motion to dismiss is DENIED. |
| 8/14/78 | Government's memo of law in opposition to Ds' motion to suppress, filed. (c/s)   |
| 8/18/78 | GARRITY, J.—Memorandum and order suppressing evidence, ENTERED (cc/cl on 8/22).  |
| 9/7/78  | Govt's motion for reconsideration of Court's order suppressing evidence, filed, c/s.   |
| 9/8/78  | GARRITY, J. re: Motion for reconsideration of district court order suppressing evidence, PROCEDURAL ORDER: The court will give further consideration to the standing issue. Defendants shall file memoranda of law on that issue on or before 9/19/78. (cc/cl)   |
| 9/18/78 | Defendant Zackular's supplemental memo of law, filed, c/s  |
| 9/19/78 | Deft. Salvucci's memorandum on question of standing, filed, c/s  |
| 9/28/78 | Govt's memo in supp. of Motion to Reconsider District Court Order Suppressing Evidence, filed, c/s.  |

| DATE     | PROCEEDINGS   |
|----------|---|
| 9/29/78  | GARRITY, J.—Upon re-consideration in light of the parties memoranda, order of suppression entered 8/18/78 is re-affirmed. (cc/cl) |
| 10/27/78 | Govt's notice of appeal of GARRITY, J. 9/29/78 order, filed, c/s.   |

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Criminal Indictment No. 78-191-G

[Filed May 5, 1978]

UNITED STATES OF AMERICA

v.

JOHN M. SALVUCCI and JOSEPH ZACKULAR

The grand jury charges:

COUNT I

Between on or about November 7, 1975 to on or about December 17, 1976 at and about Melrose, in the District of Massachusetts

JOSEPH ZACKULAR

did willfully, knowingly, and unlawfully have in his possession a check, to wit, a Grace Realty check No. 762, payable to New England Telephone, in the amount of \$108.28, which check had been contained in an item of mail which item of mail had been placed in the U.S. Mails, which item of mail had been stolen from the U.S. Mails, and he did so with the knowledge that the item of mail had been stolen; all in violation of 18 U.S. Code, § 1708.

COUNT II

Between on or about November 8, 1975 to on or about December 17, 1976 at and about Melrose, and/or Roxbury, in the District of Massachusetts

JOSEPH ZAKULAR [sic]

did willfully, knowingly, and unlawfully have in his possession a check, to wit, a Lolly's Bakery check No. 4613, payable to Siegel Egg, in the amount of \$1,396.75,

which check had been contained in an item of mail which item of mail had been placed in the U.S. Mails, which item of mail had been stolen from the U.S. Mails, and he did so with the knowledge that the item of mail had been stolen; all in violation of 18 U.S. Code, § 1708.

COUNT III

Between on or about December 16, 1975 to on or about December 17, 1976 at and about Melrose, in the District of Massachusetts

JOSEPH ZAKULAR [sic]

did willfully, knowingly, and unlawfully have in his possession a check, to wit, a Star Litho, Inc. check No. 11275, payable to Blue Cross/Blue Shield, in the amount of \$44.49, which check had been contained in an item of mail which item of mail had been placed in the U.S. Mails, which item of mail had been stolen from the U.S. Mails, and he did so with the knowledge that the item of mail had been stolen; all in violation of 18 U.S. Code, § 1708.

COUNT IV

Between on about December 24, 1975 to on or about December 17, 1976 at and about Melrose, and/or Dorchester, in the District of Massachusetts

JOHN M. SALVUCCI

did willfully, knowingly, and unlawfully have in his possession a check, to wit, a Afco Metals, Inc. check No. 5191, payable to U. N. Alloy Steel, in the amount of \$17.78, which check had been contained in an item of mail which item of mail had been placed in the U.S. Mails, which item of mail had been stolen from the U.S. Mails, and he did so with the knowledge that the item of mail had been stolen; all in violation of 18 U.S. Code, § 1708.



## COUNT V

Between on or about April 26, 1976 to on or about December 17, 1976 at and about Melrose, and/or South Boston, in the District of Massachusetts

JOSEPH ZAKULAR [sic]

did willfully, knowingly, and unlawfully have in his possession a check, to wit, a Austin Service & Sales Co. check No. 4199, payable to Colmar Belting Co., in the amount of \$14.10, which check had been contained in an item of mail which item of mail had been placed in the U.S. Mails, which item of mail had been stolen from the U.S. Mails, and he did so with the knowledge that the item of mail had been stolen; all in violation of 18 U.S. Code, § 1708.

## COUNT VI

Between on or about June 17, 1976 to on or about December 17, 1976 at and about Melrose, and/or Winthrop, in the District of Massachusetts

JOSEPH ZAKULAR [sic]

did willfully, knowingly, and unlawfully have in his possession a check, to wit, a Attorney Leon Aborn check No. 7443, payable to Winthrop Community Hospital, in the amount of \$12.00, which check had been contained in an item of mail which item of mail had been placed in the U.S. Mails, which item of mail had been stolen from the U.S. Mails, and he did so with the knowledge that the item of mail had been stolen; all in violation of 18 U.S. Code, § 1708.

## COUNT VII

Between on or about June 17, 1976 to on or about December 17, 1976 at and about Melrose, and/or Boston, in the District of Massachusetts

JOSEPH ZAKULAR [sic]

did willfully, knowingly, and unlawfully have in his possession a check, to wit, a Daka check No. 130786, payable to M. Otis, in the amount of \$159.39, which check had been contained in an item of mail which item of mail had been placed in the U.S. Mails, which item of mail had been stolen from the U.S. Mails, and he did so with the knowledge that the item of mail had been stolen; all in violation of 18 U.S. Code, § 1708.

## COUNT VIII

Between on or about June 17, 1976 to on or about December 17, 1976 at and about Melrose, in the District of Massachusetts

JOSEPH ZAKULAR [sic]

did willfully, knowingly, and unlawfully have in his possession a check, to wit, a Attorney Leon Aborn check No. 7441, payable to Charles Libermore, M.D., in the amount of \$95.00, which check had been contained in an item of mail which item of mail had been placed in the U.S. Mails, which item of mail had been stolen from the U.S. Mails, and he did so with the knowledge that the item of mail had been stolen; all in violation of 18 U.S. Code, § 1708.

## COUNT IX

Between on or about June 17, 1976 to on or about December 17, 1976 at and about Melrose, in the District of Massachusetts

JOHN M. SALVUCCI

did willfully, knowingly, and unlawfully have in his possession a check, to wit, a Kimball Foods, Inc. check No. 1024, payable to Star Kist Foods, Inc., in the amount of \$3,312.25, which check had been contained in an item of mail which item of mail had been placed in the U.S.

Mails, which item of mail had been stolen from the U.S. Mails, and he did so with the knowledge that the item had been stolen; all in violation of 18 U.S. Code, § 1708.

#### COUNT X

Between on or about June 29, 1976 to on or about December 17, 1976 at and about Melrose, and/or Malden, in the District of Massachusetts

JOHN M. SALVUCCI

and

JOSEPH ZAKULAR [sic]

did willfully, knowingly, and unlawfully have in their possession a check, to wit, a Melrose Savings Bank check No. 4978, payable to Fort Hill Engraving Co., in the amount of \$12.25, which check had been contained in an item of mail which item of mail had been placed in the U.S. Mails, which item of mail had been stolen from the U.S. Mails, and they did so with the knowledge that the item of mail had been stolen; all in violation of 18 U.S. Code, § 1708.

#### COUNT XI

Between on or about July 12, 1976 to on or about December 17, 1976 at and about Melrose, in the District of Massachusetts

JOSEPH ZAKULAR [sic]

did willfully, knowingly, and unlawfully have in his possession a check, to wit, a M. Cutler & Sons check No. 1311, payable to S. B. A., in the amount of \$402.00, which check had been contained in an item of mail which item of mail had been placed in the U.S. Mails, which item of mail had been stolen from the U.S. Mails, and he did so with the knowledge that the item of mail had been stolen; all in violation of 18 U.S. Code, § 1708.

#### COUNT XII

Between on or about July 12, 1976 to on or about December 17, 1976 at and about Melrose, in the District of Massachusetts

JOSEPH ZAKULAR [sic]

did willfully, knowingly, and unlawfully have in his possession a check, to wit, a M. Cutler & Sons check No. 1312, payable to N. J. Division of Motor Vehicles, in the amount of \$16.00, which check had been contained in an item of mail which item of mail had been placed in the U.S. Mails, which item of mail had been stolen from the U.S. Mails, and he did so with the knowledge that the item of mail had been stolen; all in violation of 18 U.S. Code, § 1708.

Commonwealth of Massachusetts

Middlesex ss.

Malden District Court  
 Court

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SEARCH WARRANT

G.L. c. 276, ss. 1 to 7; St. 1964, c. 357 As Amended

December 15 1976

I, Ronald J. Ballanti, being duly sworn, depose and say:  
 Name of applicant

1. I am State Police Officer assigned to Logan Airport, East Boston, Mass.  
 (Describe position, assignment, office, etc.)

2. I have information based upon (describe sources, facts indicating reliability of source and nature of information; if based on personal knowledge and belief, so state) (If space is insufficient,

attach affidavit or affidavits hereto) As a result of information received from a reliable informant, who has provided me with reliable information in the past, to wit: On October 24, 1976 this informant told this officer that on October 22, 1976 four round trip open-end coach tickets were purchased at the TMA ticket center at Logan Airport in East Boston for passage from Boston to Las Vegas Nevada, and Las Vegas to Boston, with a forged bank check which carried the name of Marblehead Savings Bank for the sum of \$1,552.00, and that this purchase was made by a Kathleen Burke, who was arrested for a like offense on October 23, 1976 by this officer. At the time of this arrest it was learned that subject Burke had used a counterfeit Massachusetts Drivers License and a phony Aetna Insurance Co identification card as identification in investigation into the above information given by the informant revealed the following information. The information was true, and that the keeper of the records at TMA did produce a check with the Marblehead Savings Bank, Marblehead Mass., name on it. The check bore the number 12452 and was used to purchase ticket numbers 0151201365984 - 0151201365986 - 0151201365987 - 0151201365988 - 0151201365989 - 0151201365990 - 0151201365991 - 0151201365992 - 0151201365993 - 0151201365994 - 0151201365995 - 0151201365996 - 0151201365997 - 0151201365998 - 0151201365999 - 0151201366000 - 0151201366001 - 0151201366002 - 0151201366003 - 0151201366004 - 0151201366005 - 0151201366006 - 0151201366007 - 0151201366008 - 0151201366009 - 0151201366010 - 0151201366011 - 0151201366012 - 0151201366013 - 0151201366014 - 0151201366015 - 0151201366016 - 0151201366017 - 0151201366018 - 0151201366019 - 0151201366020 - 0151201366021 - 0151201366022 - 0151201366023 - 0151201366024 - 0151201366025 - 0151201366026 - 0151201366027 - 0151201366028 - 0151201366029 - 0151201366030 - 0151201366031 - 0151201366032 - 0151201366033 - 0151201366034 - 0151201366035 - 0151201366036 - 0151201366037 - 0151201366038 - 0151201366039 - 0151201366040 - 0151201366041 - 0151201366042 - 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ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED  
DATE 01-11-81 BY 6032

Commonwealth of Massachusetts

Middlesex ss.

Malden District Court  
Court

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SEARCH WARRANT

G.L. c. 276, ss. 1 to 7; St. 1964, c. 557 As Amended

December 15 1976

I, Ronald J. Bellanti, being duly sworn, depose and say:  
Name of applicant

1. I am State Police Officer assigned to Logan Airport, East Boston, Mass.  
(Describe position, assignment, office, etc.)

2. I have information based upon (describe sources, facts indicating reliability of source and nature of information; if based on personal knowledge and belief, so state) (If space is insufficient, attach affidavit or affidavits hereto) As a result of information received from a reliable informant, who has provided me with reliable information in the past, to wit: On October 24, 1976 this informant told this officer that on October 22, 1976 four round trip open-end coach tickets were purchased at the TWA ticket counter at Logan Airport in East Boston for passage from Boston to Las Vegas Nevada, and Las Vegas to Boston, with a forged bank check which carried the name of Marblehead Savings Bank for the sum of \$1,552.00, and that this purchase was made by a Kathleen Burke, who was arrested for a like offense on October 23, 1976 by this officer. At the time of this arrest it was learned that subject Burke had used a counterfeit Massachusetts Drivers License and a phony Aetna Insurance Co identification card as identification. Investigation into the above information given by the informant revealed the following information. The information was true, and that the keeper of the records at TWA did produce a check with the Marblehead Savings Bank, Marblehead Mass., name on it. The check bore the number 194731 and was used to purchase ticket numbers 0154301365984 - 0154301365985 - 0154301365986 - 0154301365987 - 0154301365988 - 0154301365989 - 0154301365990 - 0154301365991 - 0154301365992 - 0154301365993 - 0154301365994 - 0154301365995 - 0154301365996 - 0154301365997 - 0154301365998 - 0154301365999 - 0154301366000 - 0154301366001 - 0154301366002 - 0154301366003 - 0154301366004 - 0154301366005 - 0154301366006 - 0154301366007 - 0154301366008 - 0154301366009 - 0154301366010 - 0154301366011 - 0154301366012 - 0154301366013 - 0154301366014 - 0154301366015 - 0154301366016 - 0154301366017 - 0154301366018 - 0154301366019 - 0154301366020 - 0154301366021 - 0154301366022 - 0154301366023 - 0154301366024 - 0154301366025 - 0154301366026 - 0154301366027 - 0154301366028 - 0154301366029 - 0154301366030 - 0154301366031 - 0154301366032 - 0154301366033 - 0154301366034 - 0154301366035 - 0154301366036 - 0154301366037 - 0154301366038 - 0154301366039 - 0154301366040 - 0154301366041 - 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54204865985. This check proved to be worthless and forged. This check also contained the same check number /194934/ as the check used by subject Burke on October 23, 1976 (Offense she was arrested for) and is identical in appearance except for the amount it was made out for, (\$4, 130.00) As a result of the information furnished to this officer by the informant, and an investigation that was conducted, subject Kathleen Burke, on November 9, 1976, was served with a warrant at the East Boston District Court and charged with two complaints, to-wit: Attempted Larceny of Plane Rides - Uttering a Forged Instrument - Possession of Counterfeit Licenses. This informant also gave this officer information regarding a Joseph G. Zackular of 247 Washington St., Winthrop Mass. This information was in reference to a conversation, in which subject Zackular had made statements regarding his possession of certain articles that he had in his apartment at 247 Washington St, Winthrop which were used to manufacture counterfeit licenses, and to manufacture forged checks. And that these articles are the ones used to make the license that subject Burke had used for identification when she passed the above mentioned forged checks. This information furnished by the informant and an investigation conducted by this officer led to a successful raid on subject Zackular's house in Winthrop and his arrest. Some of the items seized as a result of this raid included: A stolen Polaroid Land Identification System Camera, which was used to manufacture counterfeit Massachusetts Drivers Licenses, several counterfeit licenses, a piece of stolen Registry of Motor Vehicles Laminate, two unregistered firearms, and approximately 2.2 lbs of Marijuana. This informant who has proven its reliability in the past by giving to this officer the aforementioned reliable information has given this officer the following information. That prior to this date it was present during a conversation in which Joseph G. Zackular had stated he had a check writer which was being kept at his wife's apartment in Melrose. And that subject Zackular had stated this check writer is the one that had been being used to print amounts of money payable on forged checks. (The informant also told this officer that the person that subject Zackular had referred to as his wife, to best of the informants knowledge is either his present or past wife. The informant also stated that this subjects name was Jean D. Zackular and that he knew the location of her apartment. On December 14, 1976 this officer with the informant went to the Town Estates in Melrose, and the informant pointed out several windows belonging to the apartment occupied by Jean D. Zackular. These windows were located on the third floor of 93 Pleasant St., Melrose Mass., and were on the side and front of the building. (Front building denoted by this officer as side of building in which outside door with the number 3 is located) On December 15, 1976 this officer went to the Town Estates Apartment Complex and after investigation, it was learned that subject Jean D. Zackular Occupies apartment # 93E located on third floor of 93 Pleasant St, and that this apartment was leased to subject Jean D. Zackular on May 15, 1975, and that the lease is self-extending.

RJB 12/15/76

## 14

**First District Court of Eastern Middlesex**

TO THE SHERIFFS OF OUR SEVERAL COUNTIES, OR THEIR DEPUTIES, ANY STATE POLICE OFFICER, OR ANY CONSTABLE OR POLICE OFFICER OF ANY CITY OR TOWN, WITHIN OUR SAID COMMONWEALTH:

.....

**WE THEREFORE COMMAND YOU** in the daytime (or at any time of the day or night) to make an immediate search of \_\_\_\_\_, \_\_\_\_\_, Apartment No. 709, 3rd Floor, third floor of the multiple dwelling apartment house numbered 93 Pleasant Street, Melrose, said apartment being numbered 93E; and the cubicle assigned to said Jean D. Zuckular, said cubicle being located in the basement of said 93 Pleasant Street, Melrose, and bearing the number 93.

..... Jean D. Zucklar ....., and of any person present who may

A check writing machine, used to print amounts of money on checks which were used by Kathleen Burke, which were forged checks, and which bore the name Marblehead Savings Bank, and other related articles used to make (manufacture) and write out forged checks, and any forged checks bearing the name Marblehead Savings Bank, and any other forged or counterfeit checks.

at Malden

in said County and Commonwealth, as soon as it has been served and in any event not later than seven days of issuance thereof.

Witness, Louis H. Glaser, Esquire, Justice, at Malden, First District Court of Eastern Middlesex,  
aforesaid, this 15th day of December in the year of our Lord one thousand nine hundred and  
seventy six.

*Richard S. Henry*  
Clerk of First District Court of  
Eastern Middlesex



## RETURN OF OFFICER SERVING SEARCH WARRANT

19 76

No. 6052..

First District Court of Eastern Middlesex  
Court

COMMONWEALTH

VS.

Articles used in Committing a  
Crime

SEARCH WARRANT AND RETURN

G.L. c. 276, ss. 1 to 7  
(St. 1964, c. 557)I received this search warrant .. December 15, 1976.. and have executed  
it as follows:On .. December 17, 1976.. at .. 10:00 .. o'clock .. A.M., I searched the premises  
described in the warrant—also .. .. named in the warrant,  
and .. ..

The following is an inventory of the property taken pursuant to the warrant:

- 1 Paymaster Checkwriter, Ser # 10136
- 1 Card-board box containing: 618 stolen personal & commercial checks with various names and company names on same. - A building & land deed & correspondence belonging to Vilas & Aline Likhita. - A stock certificate from Acushnet Co. to Mrs Dorothy Akenacy. - One piece (fragment) of Registry of MV's Laminata.
- 1 Paper bag containing: 105 stolen personal & commercial checks with various names and company names on same. - six Policy books belonging to Catherine (Suan) Chilanto from John Hancock Ins Co. one house deed & correspondence belonging to: Elsie B McCowan. - one bank book (Payment) belonging to Domenic Ciambelli. - Several bank statements to various people. (Above checks-deeds-statements stolen from US Mail)
- 1 White envelope containing: 34 stolen & forged checks. - one piece (fragment) of Registry of MV'S Laminata.
- 1 White envelope containing: 6 stolen Registry of MV's data cards, Form # 220, 1 of which bears the counterfeit signature of Registrar of MV's Robert A. Panora 1 of which bears the counterfeit signature of Deputy Registrar of MV's E. Theodore Ganaris-Parts of a driver's license folder. (Cont'd)

This inventory was made in the presence of .. ..  
and .. ..I swear that this inventory is a true and detailed account of all the property taken by  
me on the warrant.

Subscribed and sworn to before me this .. 20th .. day of .. December .., 1976..

.. Katherine Rhine ..  
Notary Public  
Clerk

Lp. Assistant Clerk



This page is a continuation of items seized on Warrant # 6052.

*RJB*  
*12/20/76*

A piece of stolen Registry of MV's Laminats. - one stolen airline ticket, Trans-World-Airlines Ticket # 0154204865984. - 21 Forged Essex Bank checks # 416144. - 26 Forged Marblehead Savings Bank checks # 194943. - 13 Forged Marblehead Savings Bank checks, # 194934. - 5 blank sheets of yellow check paper. - 3 small sheets of lamination (clear plastic). one phony Aetna Insurance Co. ID bearing name of Kathleen M. Murphy.

- 1 White envelope (found in aforementioned card board box) containing: a birth certificate, a Selective Service Classification Card, a Selective Service Registration card, and a Commonwealth of Mass. pistol permit bearing the name of James F. DiPlatzi (pistol permit) and Charles E. Shay (Other ID)
- Various other papers including excise tax bills - bank statements - & cancelled checks.
- 1 Simex Mariner Sextant, Ser # 3685, with wooden carrying case.

Also taken in aforementioned cardboard box and paper bag: numerous ~~envelopes~~ envelopes both post marked and not post marked bearing numerous various names and addresses

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DOCKETED

Criminal No. 78-191-G

UNITED STATES OF AMERICA

v.

JOHN SALVUCCI  
JOSEPH ZACKULAR

MEMORANDUM AND ORDER  
SUPPRESSING EVIDENCE

August 18, 1978

GARRITY, J. After hearing defendants' motions to suppress evidence seized by the Massachusetts State Police on December 17, 1976 and considering supporting and opposing memoranda of law, it is ordered that the motions be allowed and the evidence suppressed.

In so ruling we are mindful of the common sense approach which must be taken in construing affidavits in support of applications for search warrants, see *United States v. Ventresca*, 1965, 380 U.S. 102, 108-109, and of the rule "that doubtful cases should be resolved in favor of the warrant", *Rosencranz v. United States*, 1 Cir. 1966, 356 F.2d 310, 316. We have applied the tests described in the *Rosencranz* opinion and conclude that the officer's affidavit dated December 15, 1976 failed to show probable cause to believe that the property sought was at the time of the application located in the apartment searched and that therefore the search was unreasonable, in violation of the fourth amendment.

The difficulty with the officer's application is that it combines a failure to specify times of critical conversations with double hearsay. If only one of these circumstances existed, the result might be different. The basis

for the application to the Clerk of the Malden District Court was that a reliable informant had told the officer that a subject of investigation had said in his presence that the property in question was being kept at his wife's apartment. No time was specified either as to the officer's conversation with the informant or the informant's conversation with the subject of investigation. In some respects the application was even weaker than the one in the *Rosencranz* case. There the officer's affidavit at least used the present tense; here the past tense was used ("Zackular had stated he had a checkwriter which was being kept at his wife's apartment in Melrose"). There the application was based in part on the officer's personal observations, i.e., smelling a strong order of mash; here the sole basis for believing that the property in question was located in the apartment searched was double hearsay. There the search was of premises on which it was believed that a crime was being committed; here the purpose of the search was to discover evidence of a crime for which Zackular had already been arrested, on premises occupied by a person who had no apparent connection with the crime with which the defendant had been charged.

The Government urges that the dates of the officer's conversation with the defendant can be inferred as being closely related to the time of the application from the fact that a continuing investigation was in progress which began no more than two months before the raid and from the reference to the dates of October 22 and 23 and November 9, 1976 in previous portions of the affidavit. The problem is that these dates refer simply to the arrests of codefendants and are unrelated to the hearsay on which the affidavit was predicated. Other events of greater relevance, e.g., the search of Zackular's home in Winthrop, are described but also without dates being given. The Government points out that searches were sustained in *Andresen v. Maryland*, 1976, 427 U.S. 463, and *United States v. Steeves*, 8 Cir. 1975, 525 F.2d 33, in which the information set forth in the affidavits was respectively three months and 87 days old when the search warrant was issued. But those cases are dis-

tinguishable on the basis that the premises searched belonged to the subjects of the investigations and property sought was of the type which would naturally be kept on premises controlled by the subjects. Also, so far as appears from the officer's affidavit, the critical conversation overheard by the informant may have occurred before the officer's entry into the case on October 24, 1976.

We are unsure how much weight to attach to the following additional circumstances, which could not have been known by the Clerk to whom application for the warrant was made, but mention them in the belief that they support the court's conclusion. On October 29, 1976 the same officer obtained a search warrant for the defendant's apartment in Winthrop from a different district court, the East Boston District Court. That application was similarly based on double hearsay, with a difference. The officer's statement in that application was, "This informant also told me that *within the past few days* 'IT' was present during a conversation that Joseph Zackular had stated he had in his apartment all the stuff, (which was understood by the informant to mean, a check writer . . . ." (Emphasis added.) Obviously the officer understood the importance of specifying a time close to the application for the search warrant. It also developed at the hearing on the instant motions that the search of the defendant's apartment did not produce the checkwriting machine in question and that either the informant was unreliable in that respect or—and this is the key consideration—that the subject was not talking truthfully about the location of incriminating evidence. In our view it is one thing to search the subject's own premises on the basis of such admissions and another to use them as the justification for searching premises of a "present or past wife".<sup>1</sup> Finally, it de-

<sup>1</sup> It is difficult to understand how the officer believed that the apartment in Melrose was occupied by Zackular's wife since, in the application dated October 29, 1976 to the East Boston District Court, he listed the defendant and his wife Elizabeth as residing at the apartment in Winthrop.



veloped at the hearing that Zackular was arrested at the time of the successful raid on his house on or about October 29, 1976. Statements by a person, after he has been arrested, as to the location of instrumentalities of the crime seem to us less reliable than alleged statements before his arrest, at least absent the particularization of circumstances which would buttress their reliability. This observation is relevant to the Government's construing the affidavit to mean that the defendant's admission occurred after November 9, 1976.

Decisions on motions to suppress, such as the instant ones, must in the final analysis rest on all the attendant circumstances, especially in our view the type of property being sought and the relationship, if any, of the premises searched to the commission of the offense and of the persons controlling the premises to the crime. Allowances must, of course, be made for the time and other pressures under which law enforcement officers draft their affidavits. It is not expected that they be as comprehensive and precise as legal documents. On the other hand, the element of timeliness of information set out in the officer's affidavit is so essential and well understood by law enforcement personnel that to sustain its omission in a case like this one would, we think, invite the very evils portrayed by Judge Coffin in the *Rosen-  
cranz* case.

/s/ W. Arthur Garrity, J.  
United States District Judge

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Criminal Number: 78-191-G

[Filed Sep. 7, 1978]

DOCKETED

UNITED STATES OF AMERICA

v.

JOHN SALVUCCI  
JOSEPH ZACKULAR

MOTION FOR RECONSIDERATION OF  
DISTRICT COURT ORDER  
SUPPRESSING EVIDENCE

Now comes the United States of America by its Attorney, Edward F. Harrington, United States Attorney for the District of Massachusetts and respectfully requests that the Honorable W. Arthur Garrity reconsider his August 18, 1978 Order Suppressing Evidence, and thereafter hold a hearing on the issue of defendant's standing to contest the admissibility of the evidence.

In support thereof, the Government states that after a review of this case, it appears that the defendants did not have sufficient proprietary or possessory interest in the property seized or premises searched to contest the admissibility of evidence in this case. Further, it appears that the defendants do not have "automatic standing" to contest this issue pursuant to *Jones v. United States*, 362 U.S. 257 (1960). Therefore, the Government would ask that this Honorable Court now consider the issue of whether the defendants had standing to successfully exclude the property seized in this case, in light



of *Brown v. United States*, 411 U.S. 223 (1973), and if deemed necessary schedule a hearing on this issue.

EDWARD F. HARRINGTON  
United States Attorney

By: /s/ John W. Laymon  
JOHN W. LAYMON  
Assistant U.S. Attorney

PROCEDURAL ORDER  
9/8/78

The court will give further consideration to the standing issue. Defendants shall file memoranda of law on that issue on or before 9/19/78.

/s/ Garrity, J.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Criminal Number: 78-191-G

UNITED STATES OF AMERICA

v.

JOHN SALVUCCI AND JOSEPH ZACKULAR

[ORDER—entered September 29, 1978]

Upon reconsideration in light of the parties' memoranda, suppression entered 8/18/78 is reaffirmed.

Garrity, J.

SUPREME COURT OF THE UNITED STATES

No. 79-244

UNITED STATES, PETITIONER

*v.*

JOHN M. SALVUCCI, JR. and  
JOSEPH G. ZACKULAR

ORDER ALLOWING CERTIORARI

Filed December 10, 1979

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted. The case is set for oral argument in tandem with No. 79-5146, *Rawlings v. Kentucky*.